

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1656 OF 2007

1.Ashok Hassanand Bathija & Ors..Petitioners

Versus

1.Shri K.N. Kashivale, Deputy
Collector & Competent Authority
& Ors.

....Respondents

Mr. P.K. Dhakephalkar, Senior Counsel with Mr.
J.S.Chandnani, for the Petitioners
Mr. Arif Bookwala, Senior Counsel with Mr. Cyrus Ardeshir
i/b. S.N. Gupta & Co., for respondent Nos. 2 to 4.
Mr.A.J. Rana,Special Counsel for Respondent Nos.1,5 to 7.

**CORAM : F.I. REBELLO &
R.M.SAVANT, JJ.
DATED : 5TH APRIL, 2007.**

P.C.

. Rule. By consent of the parties heard forthwith.

Petitioners are the owners of land bearing Survey No.84,85 and 87 in village Ris, Taluka Khalapur, District Raigad. The respondent No.2 is having a Project of laying natural gas pipeline from Panvel to Ambewadi in Raigad District. On 15th June, 2004 the Government of India published a Notification under Section 3(1) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, hereinafter known as the Act, declaring its intention to acquire the right of user in the lands in the concerned villages in Taluka Khalapur, District Raigad including the petitioners land. The petitioners were served with notice of acquisition under the Act. On 28th April, 2005 the petitioners filed their objections opposing to the route of the pipeline and suggesting alternative routes

which according to the petitioners will serve the same purpose of laying the proposed gas pipeline. The petitioners made a further representation. Subsequent to representations and the hearing which took place before the respondent No.1 the Competent Authority, the respondent No.1, by his order dated 20th June, 2005 was pleased to hold that the lands in the village Ris, Taluka Khalapur need not be sent for Section 6(1) notification at that stage to the Government of India. The respondent No.2 was directed to study the alternative route suggested by the objectors and submit their fresh proposal for acquisition under the Act

for the proposed pipeline.

. Thereafter the petitioners sought information from the respondent No.2. A joint inspection also took place between the Senior Managers of Respondent No.2 and the petitioner No.1. On 4th January, 2007 the Competent Authority issued a notice of the meeting to be held on 6th January, 2007. The petitioners by their application dated 17th January, 2007 stated that if the Respondents want to take some steps the GAIL (I) will have to start regular proceedings before the Competent Authority. The petitioners submitted that the respondent No.1 and other respondents had not submitted any statement regarding their studying the three routes alignments as directed in the order dated 20th June, 2005. The letters letter by the petitioners to respondent No.1 it appears were forwarded to respondent No.2 apparently for their comments. Thereafter by a communication dated 20th February, 2007 respondent No.1

informed the petitioner that the objections were heard and rejected. The petitioners by an amendment has annexed the reasoned order of 20th February, 2007. It is this order which is the subject matter of the present petition.

2. The petitioners have raised various objections to the impugned order. It is contended that the order suffers from total non-application of mind considering the provisions of the Act. The Competent Authority has addressed himself to wrong questions. The Competent Authority did not consider the objections which were filed, which he was bound to do. The order, therefore, suffers from illegalities and consequently is liable to be quashed and set aside.

3. The petition is opposed by respondent Nos. 2 to 4, who have filed the affidavit of E.S. Ranganathan. In the affidavit it is pointed out, how the pipeline is essential for generating additional electricity in the State of Maharashtra, which is power deficient and how expeditious completing the project of laying the pipeline would help to achieve that objective. It is pointed out that based on the suggestions of the petitioners and also the orders of the Competent Authority the petitioners along with the Engineers of EIL (a Government of India Undertaking) examined the site and the feasibility of the objections raised by the petitioners. In the report dated 9th December, 2006 submitted by the respondent No.2 and EIL it is stated that the pipeline project was already in the advanced stage of execution and that the representatives of both respondent

No.2 and EIL had visited the site and explored the various possibilities . After considering the various aspects a revised route was shown to the petitioners on 4th December, 2006 together with a revised route plan. The same was filed before the respondent No.1 for his consideration. Respondent No.1 after considering all aspects and hearing the parties by a detailed order dated 20th February, 2007 rejected the objections. A report was submitted to the Central Government containing the recommendations. On receipt of the report the Central Government has been pleased to issue the Notification under Section 6(1) of the Act which has been published in the Gazette of India dated 2nd March, 2007.

3. The question is considering the contentions urged on behalf of the petitioner and respondents, whether the relief sought for in this petition ought to be granted.

4. We may firstly reproduce parts of the report prepared by respondent No.1 which reads as under:-

"Dr. Bathija argued as under:-

- 5) There is no clarification of Gail (India) Ltd. of the Routes suggested by him.
- 6) No reasons are given by Gail (India) Ltd. why the routes were rejected.
- 7) Gail (India) Ltd., had not replied to C.,A. in a proper manner of reply. The replies given by Gail were only memos. The memos were not issued to C.A. by Authorised officers of Gail.

8) Gail had not studied routes in compliance of the C.A's order & have willfully committed inaction & non performance with malafide intentions of evading and avoiding compliance of the order dt. 20-6-2005 on subject of great Natural Importance & demanded copies of study reports."

"I have shown & read out the provision of section 7(1) of the PMP Act at the time of hearing of Dr. Bathija.

The provision of section 7(1) of the PMP Act 1962 are reproduced below.

Provided that no pipe line shall be laid down :-

e) Any land which immediately before the date of the notification under sub-section (1) of section 3, was used for residential purposes.

f) any land on which there stands any permanent structure which was in existence immediately before the said date.

g) any land which is appurtenant to a dwelling house or

h) any land at a depth which is less than one M from the surface.

2. If any dispute arises with regard to any matter

referred to in para. (B) or para (a) of the proviso
to clause (i) of sub-section (1), the dispute shall
be referred to the Competent Authority whose decision
there on shall be final.

This is the important & legal provision in the said
Act which can be considered by C.A. at the time of
hearing of claims under section 3(1). If Acquiring
Body is laying pipeline violating the provisions of
this section, C.A. is empowered to consider claims
of land owners.

Dr. Bathija requested to modify/change routes going
through his lands. On going through the provisions
quoted above, I find that his request cannot be
supported.

(iv) His lands are not used for residential purpose.

(v) There is no permanent structure in the land.

(vi) The land is not appertenant to a dwelling house.

The GAIL (I) Ltd., have consented to slightly change
the route as shown in revised map given to C.A. & to
Dr. Bathija.

. The Acquiring Body is the technical Authority who can
fix the route or revise the Route. Competent Authority can

submit 6(1) Notification as per AB's proposal. As stated by Gail, the Team of Gail & EIL had visited the site and explored the possibilities. Gail considered various technical & functional constraints like proximity of pipe line, 110 k.w. power transmission line, terrain, as well as acquisition of new S.Nos. Road crossing, permanent LAQ of Tap office point, forest land, etc. & alternatively route within the same S.Nos. was identified. The Route was shown to Dr. Bathija by Gail India Ltd. This was also been explained to Dr. Bathija in the hearing in my office by Acquiring Body/Competent Authority.

The suggestion of Dr. Bathija does not fall within the provisions under section 7 of the PMP Act 1962 as earlier explained by me."

5. We may now examine the provisions of the Act. Under Section 3 when it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum from one locality to another locality pipelines may be laid by that Government or by any State Government or a Corporation and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid. It may, by notification in the Official Gazette, declare its intention to acquire the right of user therein. A notification has been issued under Section 3(1) of the Act. Under Section 5 a person interested has been given the right of filing the objections within the time stipulated therein. The

Competent Authority before whom the objections are made and after giving objector an opportunity of being heard and after hearing all such objections and making such further enquiry by order either allow or disallow the objections.

Under sub-section (3) any order made by the Competent

Authority under sub-section (2) shall be final.

6. For the purpose of discussion we may gainfully reproduce sub-section (1) and (2) of Section 6 of the Act, which reads as under:-

"6. Declaration of acquisition of right of user.

(1) Where no objections under sub-section (1) of section 5 have been made to the competent authority within the period of specified therein or where the competent authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be, either make a report in respect of the land described in the notification under sub-section (1) of section 3, or make different reports in respect of different parcels of such lands, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government and upon receipt of such report the Central Government shall, if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral, declare, by notification in the Official Gazette,

that the right of user in the land for laying the pipelines should be acquired and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-section (1) of Section 3, irrespective of whether one report or different reports have been made by the competent authority under this section.

(2) On the publication of the declaration under sub-section (1), the right of user in the land specified therein shall vest absolutely in the Central Government free from all encumbrances."

. Under Section 7 it is provided that when the right of user in any land has vested in the Central Government or in any State Government or corporation under Section 6 it is lawful for any person authorised by the Central Government or such State Government or Corporation to enter upon the land and lay pipelines or do any other act necessary for the purpose of laying of pipeline. Under the proviso no pipeline shall be laid under--

(a) any land which, immediately before the date of the notification under sub-section (1) of section 3, was used for residential purposes;

(b) any land on which there stands any permanent structure which was in existence immediately before

the said date.

(c) any land which is appurtenant to a dwelling house; or

(d) any land at a depth which is less than one metre from the surface."

7. We may now examine the impugned order. As we have noted earlier, the main objection as raised by the petitioners was that there were alternative routes. The Competent Authority proceeded to consider the objections on the touch stone of Section 7 of the Act. The learned Competent Authority after noting that the acquiring body is the technical authority and the respondent No.2 had considered the various technical and functional constraints and the alternative route was pleased to hold that the suggestion does not fall within the provisions of Section 7 of the PMP Act. In other words the respondent No.1 has proceeded on the footing that considering the objections, what has to be considered are what is set out in Section 7. It may be noted that the provisions of Section 7 are subsequent to the right of user in the land vesting in the Government/Corporation under Section 6(2) of the Act. It is possible that while considering the objections under Section 5(a) what is set out in Section 7 may also have to be borne in mind. However, Section 5 of the Act does not preclude a Competent Officer from considering other objections. On the contrary every objection raised under Section 5(1), the

Competent Authority after hearing all objections either must allow or disallow the objections. The petitioners main objections were to the alternative routes. The respondent No.1 while considering the objections has applied the tests under Section 7(1) of the Act and on that ground has rejected the objections. It may be noted that the decision on objections under Section 5(3) is not final. The Central Government under Section 6 can only issue the declaration if the Competent Authority has decided the objections under sub-section (2) of Section 5. In other words if the objections are allowed there appears to be no discretion under the Central Government to issue a declaration under Section 6(1). The hearing contemplated and the decision on the objections, therefore, have far reaching consequences. If the objections are allowed, the making of the declaration under Section 6(1) of the Act will not arise. In the instant case the respondent No.1 though has noted that Engineers of Respondent No.2 and the EIL have visited the site nevertheless rejected the objections solely on the ground that they did not fall under Section 7.

8. In our opinion this is a total misreading of the provisions of the Act by respondent No.1. On this count alone the petition will have to be allowed and the impugned order dated 20th February, 2007 will have to be set aside and the matter remanded to the respondent No.1 for reconsideration according to law. Petitioners to appear before the respondent No.1 on 12th April, 2007 at 12.00 Noon for further directions. Rule made absolute accordingly.

There shall be no order as to costs.

(F.I.REBELLO, J)

(R.M. SAVANT,J)